THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
CENTERS FOR DISEASE CONTROL AND PREVENTION
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

ADVISORY BOARD ON

RADIATION AND WORKER HEALTH

The verbatim transcript of the Meeting of the Advisory Board on Radiation and Worker Health held via Teleconference on Thursday, May 1, 2003.

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(Continued)

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(Continued)

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PUBLIC PARTICIPANTS

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CARMEN GONZALES, Survivor
EPIFANIA JACQUEZ, Survivor
RICHARD MILLER, Government Accountability Project
CHERYL MONTGOMERY, St. Louis, Missouri
BETTY JEAN SHINAS, Survivor
TIM TAKARO, University of Washington

P R O C E E D I N G S

3:04 p.m.

[Preceding the call to order, a roll call of the Board was taken. All Board members were present.]

DR. ZIEMER: Let the record show that all the Board members are present and accounted for, and we will proceed.

I assume you all have the agenda, which just has two items on it, the first of which will be a public comment period, and then the deliberations of the Board on the Special Exposure Cohort.

And again, let me ask that as individuals speak be sure to identify yourselves. I know that some of us, some Board members, are able to identify each other by the sound of their voices, but we do have the recorder, court reporter aboard who will be taking the transcripts and will need identities of all the speakers as we proceed.

So with that, let us turn first to the public comment period, and I will ask those members of the public who wish to speak identify themselves, and if appropriate their affiliation. We'd like to ask you, since we only have a brief 15-minute

period, I'd like to give priority to members of the public who have not yet addressed the Board in the past couple of conference calls. If you've already addressed the Board on this issue or pertaining to the Special Exposure Cohort, your remarks are already on the public record and the Board has heard those. And unless you have additional or new information, we'd like to give priority to any members of the public who haven't had a chance yet to express their views or comments either on the rulemaking or on anything pertaining to the Special Exposure Cohort.

So with those comments, let me ask if there are any members of the public on the conference call who do wish to speak? Just please speak right up and identify yourself.

MS. JACQUEZ: Epifania Jacquez, E-P-I-F-A-N-I-A, J-A-C-Q-U-E-Z. I am a survivor.

DR. ZIEMER: Okay. Proceed.

MS. JACQUEZ: Thank you.

DR. ZIEMER: Proceed.

MS. JACQUEZ: Aren't you taking the names of the people that want to comment? I'm just giving you my name.

DR. ZIEMER: Oh, well -- yeah, we'll take the

names. That's fine. And then we'll come back to you. We'll take them in the order that they give us the information.

Who else will wish to speak?

MS. SHINAS: My name is Betty Jean Shinas, S-H-I-N-A-S, and I have spoken in the past but I'd like a few comments.

DR. ZIEMER: Okay.

MR. MILLER: Richard Miller, Government Accountability Project.

DR. ZIEMER: Richard.

Any others?

MS. GONZALES: Carmen Gonzales. I have also commented previously, but you don't have too many today, I'm sure you have time to listen to mine.

DR. ZIEMER: We will if we don't have too many.

Are there any others? That's four so far.

MS. ANDERSON: Janine Anderson. I'm a former K-25 worker on disability.

DR. ZIEMER: And any others?

[No responses]

DR. ZIEMER: Now of these five, the first two individuals, have you spoken to the Board before?

UNIDENTIFIED: I have.

UNIDENTIFIED: I have also.

UNIDENTIFIED: I have also.

DR. ZIEMER: Ms. Anderson, had you?

MS. ANDERSON: I have not.

DR. ZIEMER: If it's agreeable, then, let's let Ms. Anderson go first, then we will go back to the others.

MS. ANDERSON: If possible I'd like to wait till the end.

DR. ZIEMER: Oh, you would?

MS. ANDERSON: I'm not prepared at this time.

DR. ZIEMER: Okay. Then let's hear from the first individual, then.

MS. JACQUEZ: Okay. I guess that was me. This is Epifania Jacquez.

And during our last conference call certain subjects were raised, and one of them was the special cohort. Our request was the Los Alamos workers be included in this Special Exposure Cohort. I'd like to know where the Board has gone on this, if it has given any consideration to this subject.

Also, I would like to -- I'm wondering if there is going to be some process in motion to speed up claims, because it's going very, very

slowly. And I was present in Los Alamos. They celebrated 60 years of the National Lab. And that was mentioned by our state governor, that he wishes that all of you would get on your toes and start perhaps expediting this whole thing. Because the claims that have been received, the claims that have been paid, are just -- it's almost a joke. And so I think that this needs to be addressed.

And I know this -- it's not a question-and-answer session, but these things need to be answered. And I know that your Board is right there where they can address these issues.

And I guess the last one that I would like to address is the fact that the 22 cancers that were in the original Act need to be left in there, because it is a law. And so I also want (inaudible), the 22 cancers that (inaudible) named in the law should be left in there because that's what this whole thing is about.

So I'd like these issues addressed, or I'd like some response from your Board.

DR. ZIEMER: Let me just indicate quickly -- and I don't want to take all of the public comment time -- but on your first comment asking

what the Board has given consideration to since the last telephone conference, and the answer is the Board -- all the Board meetings are open to the public, and the last conference call was the last Board meeting. And so that meeting that you were present at is the last consideration the Board has had. This one today will follow up on that. The Board does not meet privately between these -- between its meetings, so this --

MS. JACQUEZ: Well, this is perfect, then, because you can address it while I'm on. I'd like these things addressed, please.

DR. ZIEMER: Yeah. So that is the answer to that first question.

The speeding up of the claims is the objective of having the contractor aboard, and that has already occurred. I don't think we have time today to go into all the data on the rates at which those are being processed, but that is occurring now.

MS. JACQUEZ: Could I have one last comment, please, and I know that you have other people waiting. But there was some legislation that was passed, HR-1758 by Ted Strickland, democrat from Ohio, that puts like 180-day table, timetable for

you to process these claims.

And again, if any of these things can be addressed I would really appreciate it. And I'm going to let somebody --

DR. ZIEMER: I don't believe that will be addressed today. That is not on the agenda.

MS. JACQUEZ: Well, then I'd like to get some kind of response for this. You might give it some thought and let us know when we can hear about this.

DR. ZIEMER: Thank you.

MS. JACQUEZ: Okay.

DR. ZIEMER: The second speaker? Who was second?

MS. GONZALES: I'll just go ahead.

Good afternoon. My name is Carmen Gonzales. I'm a surviving daughter of Manuel Almeida -- and if you would please spell that correctly I'd appreciate it, that's A-L-M-E-I-D-A -- who worked in Los Alamos, my father did, for 34 years.

My purpose today is not to comment but to request the Board to seriously consider and put forth every effort to include Los Alamos in its special cohort. I am also requesting the Board to adhere to the list of 22 cancers that were

mandated by law in 2000.

And I'll be -- that's all I have to say today, and thank you for your time.

DR. ZIEMER: Thank you.

Richard Miller?

MR. MILLER: Thank you, Dr. Ziemer. I have three brief points to make.

The first was at the last Board call there was a question raised about legislative intent. And maybe the Board has already received this information, but I will state it in any event, that this question of whether it should be 22 cancers and whether the list is fixed or variable was addressed in the Congressional record on October 12th of 2000.

In a floor statement by Senator Bingaman, who was one of the people in the conference who put this legislation together --

DR. ZIEMER: And Richard, let me interrupt that that has in fact been distributed to the Board.

MR. MILLER: Oh, okay. Thank you, Dr. Ziemer.

And so I think it makes pretty clear what legislative intent was, so I hope that's not a

question for debate going forward. I would also add that I think that message was conveyed to NIOSH staff when they did briefings both on the House and Senate side, it was a pretty clear message delivered by those who were in the room when the deal was done. Not that it carries as much weight as something in writing on the record, but it should be considered.

Secondly, I understand -- at least I heard this morning -- that correspondence may have been forwarded that I think I copied you on, Dr. Ziemer, between myself and Ted Katz regarding this question about whether or not it is possible that people who have greater than a 50 percent probability of causation and have a worst-case dose estimate will necessarily be compensated. And although the record clearly reflects Ted Katz's comments at the March 7th meeting that indeed people, if they did have a worst-case estimate and their probability of causation was above 50 percent and there was no other data available to do anything other than a worst-case estimate, that that would be used for adjudicating claims.

And that provided some comfort until I looked

at both the rule and the preamble to the rule under Part 82, where I think at least the Board may want to consider the ambiguities in Part 82. And there are two parts of Part 82 that are relevant. The first part is that it clearly states that worst-case dose estimates will be used under 82.10, subpart (k), when the probability of causation is less than 50 percent. But the preamble states that it would only be with great difficulty to use a worst-case dose estimate in the event that the probability of causation exceeded 50 percent. And this all becomes very relevant, it seems, if SEC petitions are now going to be denied based upon the ability to perform a worst-case dose estimate.

And so maybe it is all okay, and maybe as we have been assured verbally that is the case. But the rule itself does not provide explicit clarity in that area, and probably could stand some improvement.

DR. ZIEMER: And let me comment, I had received your comments and thought it would be useful to let the full Board hear those comments as well as Ted's reply, because I was the only one that I knew of at that point that had the

benefit of those comments. So I did distribute those a couple of days ago to the Board.

MR. MILLER: Good, good. I'm glad.

DR. ZIEMER: Or actually I sent -- I asked NIOSH to, I -- no, I think I sent them out.

MR. MILLER: Whatever, it's fine. I have no objection. But I do want to make sure that that issue --

DR. ZIEMER: So basically the question you're raising now, I think the Board has some written stuff on it from you.

MR. MILLER: Okay. Fine.

The third issue has to do with a question that came up at the March 7th Board meeting, and I bring this up because it was now in the transcript which finally was posted in which the question is whether the dose, when you do a worst-case dose estimate, is it going to be a point estimate or a constant value which you would input to IREP, or will it be -- will the worst-case be some part of a distribution? And if it's part of a distribution, what we've discovered is that if you -- whether you use a triangular mode distribution as in the Bethlehem Steel case or use a normal distribution,

obviously if you put something at the tail end it gets a lot less weight. And so I just wanted to note that the Health Physics Society had recommended that a constant value be used.

Hello?

DR. ZIEMER: Yeah, go ahead.

MR. MILLER: The constant value --

DR. ZIEMER: The line is so good this time that you're not sure it's still there, right?

MR. MILLER: Exactly right. I'm amazed. But let's leave the static out, though.

So I would just raise for the Board the question of whether or not to recommend the point estimate or constant value which the Health Physics Society recommended, or whether it would be better to provide a distribution; and if so, why would a distribution which provides less weight to a worst-case estimate be applied if you're trying to give the claimant the benefit of the doubt?

And finally, I guess the only other question I would have is that the Board probably has not discussed, and maybe doesn't have time today, is what do you do in cases where you have a non-SEC cancer, but you have someone who is in an SEC?

What do you do with the dose that you can't estimate that they received as a member of the SEC when you're trying to estimate their dose reconstruction for a non-SEC cancer? And so you may have some dose within and some dose without the SEC. And it wasn't clear how to assign dose, and NIOSH's rule didn't really recommend any methods for assigning dose. And so I just thought I would put that on the table as an unresolved issued from the rulemaking.

DR. ZIEMER: Okay, thank you, Richard.

Let's see --

MS. NEWSOM: There was Betty Jean Shinas.

DR. ZIEMER: Betty Jean, yes, please. Go ahead.

MS. SHINAS: The only comment I had, and I may have misunderstood or misread something, that the Advisory Board, that the term would be coming to a close. Is that correct? And if so, what is -- what's in motion to get that going again?

MR. ELLIOTT: Let me respond to that.

DR. ZIEMER: Yes, let the --

MR. ELLIOTT: This is Larry Elliott.

DR. ZIEMER: Larry Elliott, the Federal officer --

MS. SHINAS: And I'd like to just close, just a few more words on that, as I feel that I am thankful that we are being heard, but I think this is about the only place that we've been able to really comment. And I know the comments are short, but at least it has been given us an opportunity to do this as a family.

DR. ZIEMER: Right. Thank you.

Larry Elliott.

MR. ELLIOTT: Sure.

To respond to your question about the Board, the charter does expire this August. And we are in fact proceeding to renew that charter, and will have it in place before the expiration date so that the Board can continue its business as required by statute and the delegated authority through the Department.

Let me also say that -- so I hope that answers your question. The Board is not going to go away. Its charter expires, but we have full interest and attempt underway to renew that charter.

With regard to providing comments, we continually continue to encourage everyone to provide written comments to the docket. This

forum of public comment during the Board meeting is only one approach for the public to have their voices heard. The real opportunity for the public to comment on the proposed rule, however, is by providing written comments as proscribed by the rule.

Thank you.

MS. SHINAS: Thank you.

DR. ZIEMER: Thank you.

And then we have -- did that complete your comment, Betty Jean?

MS. SHINAS: Yes, it did. I had just read that, and it was a concern with me.

DR. ZIEMER: Thank you.

And then I think we have Ms. Anderson yet.

MS. ANDERSON: Yes, my questions have already been answered, thank you.

DR. ZIEMER: They have? Okay, thank you very much.

Actually, it is now time for us to move to the Board deliberations. Members of the public are still welcome to listen in on this. We are not asking you to participate in the deliberations since these are deliberations of the Board, but you're certainly -- the

discussions are public, and you are welcome to continue to listen in.

MS. HOMER: Dr. Ziemer?

DR. ZIEMER: Yes.

MS. HOMER: This is Cori.

DR. ZIEMER: Yes, Cori.

MS. HOMER: I would like to --

DR. ZIEMER: Do we need to get a roll call of others?

MS. HOMER: If we could get a roll call of the federal employees for the record.

DR. ZIEMER: Okay, either a roll call or ask them to identify themselves.

MS. HOMER: Yes, please identify yourself for the court reporter.

MR. NAIMON: This is David Naimon, and Liz Homoki-Titus.

MS. HOMER: Thank you.

MR. KOTSCH: Jeff Kotsch with the Department of Labor.

DR. ZIEMER: I'll ask the reporter, if you need to hear names spelled just so indicate.

MS. NEWSOM: All right, thank you.

MR. NETON: This is Jim Neton from NIOSH.

MR. SUNDIN: Dave Sundin, NIOSH.

MS. HOMER: And I guess Cori Homer, NIOSH.

MR. KATZ: I'm sorry, Ted Katz, NIOSH.

MS. ROSS: Renee Ross, Committee Management, MASO.

MS. GAY: Annette Gay, Birth Defects, CDC.

DR. ZIEMER: Any others?

[No responses]

DR. ZIEMER: Okay, thank you very much.

MR. TAKARO: (Inaudible) other people on the line. This is Tim Takaro at the University of Washington (inaudible).

DR. ZIEMER: Okay. Any others that want to identify themselves?

[No responses]

DR. ZIEMER: Okay, then we will proceed.

The focus of our attention today -- I want to make a few preliminary remarks, and then we'll get very specific. Our preliminary focus today will be to finalize the comments and views of the Board pertaining to Section 83.13.

Now in that connection there are two particular sections that I see us as focusing on, all of which are part or two particular portions of the SEC that are subsets of Section 83.13. Now I'm working fully out of the *Federal Register*

copy today, if that's agreeable with everyone. So Board members, you want to have your *Federal Register* copy handy there so that if we give page numbers that will be helpful to you.

Now I'm getting some echo. Something change here? Okay, is that better?

UNIDENTIFIED: Yes.

DR. ZIEMER: Okay. In Section 83.13 there's two particular subsections that I expect we will focus on.

One of those is subsection (b)(1), which is in the third column of page 11308, and this is the issue relating to estimating doses with sufficient accuracy. That was an issue that we discussed at our last meeting, and remains an issue which we have not yet come to closure on.

Then on page 11309 in column one, section -- this would be paragraph (b)(1)(iv), Roman numeral (iv) near the top of the page, which -- and then that one, coupled with item (b)(2), Roman numeral (iii) near the middle of the page, both of these deal with the issue of specified cancer types and the definition of an SEC class that involves tissue-specific cancer sites. So that's basically this issue of less than the 22 cancers,

or to put it another way, one or more cancer sites as being part of the class definition.

It seems to me those are the two main issues we need to focus on today. In that connection, you should have a couple of written items.

First, I want to make sure everyone on the Board received what would be labeled the draft comments on 42 CFR 83. I believe these are -- this is a compilation of everything that we had done to date, as well as some new items. It is stamped in the upper right as "draft" with a date of 4/24/03 on it. It should have been distributed, I believe, within the last couple of days by either Cori or by Nichole, and it has 13 numbered items on it.

Does everyone have that draft, or if you don't speak up.

MS. MUNN: This is Wanda. Did that come by mail?

DR. ZIEMER: Should have been by e-mail.

UNIDENTIFIED: Came by e-mail. Mine came in at 1:28 p.m. today.

MS. MUNN: Oh. I haven't been online today. I'd better check it.

MS. NEWSOM: Cori?

MS. HOMER: Yes?

MS. NEWSOM: This is Kim. Would you mind e-mailing that to me, please?

MS. HOMER: Absolutely.

MS. NEWSOM: Thanks.

DR. ZIEMER: Now while that's occurring, let me point out to you that on that document the first ten items are items that we have already, I would say, come to closure on and agreed to. It's items 11, 12, and 13 which pertain to the topics that I just mentioned here -- that is, the issue of specified cancer types and the issue of sufficient accuracy.

Now the other document that you should have was distributed a couple of days ago. These are some comments that were developed by Jim Melius. This was, I believe, a little over three pages long. It has a title on it called "SEC Comments," and it specifically deals with this Section 83.13. It includes actually two recommendations. There's a lot of narrative, but there are actually two recommended actions, in a sense, both of which are underlined as action paragraphs. One of those is on the third page of Jim's document, and that's the issue of

sufficient accuracy; and then on the fourth page of Jim's document is a recommendation relating to the limit on the provisions for limiting cancers eligible for compensation in the Special Exposure Cohort. So that is a document, as well, that I think we need to have before us as we proceed.

And let me tell you that there's some differences in these two. The document that I distributed with the original set of comments was -- the three points, 11 through 13, were sort of summaries of where I thought we had sort of agreed at the last meeting in terms of at least identifying some issues, although we had not fully come to closure on it.

Jim's documents relates to those, or Jim's comments and recommendations relate to those. They have a somewhat different specificity in the case of the specified cancers. Jim's recommendation is one of simply removing the provision to limit. The words that I had used in mine had to do with requiring that NIOSH reconfirm or establish Congressional intent with regard to that issue. So there's kind of variations on the same thing, and we can discuss a direction that the Board may or may not wish to

go on that issue.

Similarly, on sufficient accuracy, Jim's has a little more specificity in that the comment I had, which is comment 13, was to ask for clarification. Jim's has a little more specificity in asking that some actual guidelines be developed as NIOSH proceeds. So those are sort of -- I just used that to kind of lay out what's before us.

I want to make sure everybody has the documents. Is there anyone that didn't get the Jim Melius discussion?

[No responses]

DR. ZIEMER: Apparently everybody got that. Okay.

Now let me also, as we get underway here, ask the Board members -- and you can just comment on this briefly if you wish -- do you agree that those are the items we would like to come to closure on today, and are there any other items that you think have been left hanging that are not -- that we didn't already cover?

[No responses]

DR. ZIEMER: Pro or con. I want to make sure that we feel like we've captured all of the

salient points in the proposed rulemaking that we want to comment on, and what I'm saying is I think these are the last two. Am I right, there? Anyone think there are other issues we need to comment on?

[No responses]

DR. ZIEMER: Yeah or nay?

MS. MUNN: Sounds good to me. This is Wanda. I think these are the two we need to be addressing.

DR. ZIEMER: Okay. Then I suggest that we begin with the issue of sufficient accuracy since that's the first paragraph to deal with under 83.13. It's the right-hand column of page 308.

DR. ANDRADE: Paul?

DR. ZIEMER: Yes.

DR. ANDRADE: This is Tony Andrade.

DR. ZIEMER: Tony.

DR. ANDRADE: I'd like to suggest that we start with 83.13, Section (b)(1), little Roman (iv), regarding the --

DR. ZIEMER: Oh, on the cancer types?

DR. ANDRADE: -- the cancer tissues, cancer types and tissues.

DR. ZIEMER: I'm fine with doing that. Is

there a particular reason you want to go in that order?

DR. ANDRADE: Well, I think that we have now had three conference calls, and basically we end up at a stumbling block with respect to this particular issue.

And after doing much soul-searching about kind of limitation, I've come to the conclusion that reaching sufficient -- I hate to use the word "sufficient" because it starts to tie us up with the other topic, but let's put it this way: You used the word "equity," some level of equity between the definition of a new SEC class that is limited in this -- in the way it's described in that paragraph with the SEC that's already defined in legislation.

Well, frankly, I don't think we're ever going to get there, because the way Congress described or defined SEC, the SEC which included three gaseous diffusion plants and some veterans that were associated with weapons testing, they did us all an injustice by a bunch of lawyers getting together and deciding that an entire facility should be designated as Special Exposure Cohort.

I'd really like to know, for example, what

percentage of those entire facilities' work force that were there for the requisite amount of time are going to ever really present with cancer. Ten to one, it's going to be 30 percent or less, the specified cancers. So they put us off to a bad start. So that forces us into a very difficult situation insofar as determining equity.

I would say, and I'd like to put this forward for the rest of the Board to comment, the following:

I believe that the only way that we're going to ever satisfy ourselves, the public, and Congressional intent, which I believe to be simply stated in three words -- be fair, and be claimant friendly -- is to simply include all 22 cancers that were listed in the original legislation, and do away with any type of limitation as a way to define or to specify a group. In other words, get rid of any relation, any -- get rid of small paragraph small Roman (iv), and anything in the preamble that alludes to limiting the number of cancers to anything less than the 22.

DR. ZIEMER: Okay. Tony, are you asking for

comment on this at this point, or am I to understand this to be a formal motion on your part?

DR. ANDRADE: I'm asking for comment at this particular point in time.

DR. ZIEMER: Okay, thank you.

Let me ask how other Board members wish to respond to that comment and view.

DR. MELIUS: This is Jim Melius.

That was basically what I was proposing, with the -- I guess with the added change that should it work out that in the future we feel that this is inappropriate in some way in our actual experience in designating cohorts that we can always make later recommendations, whether it be to Congress or to NIOSH, to work out ways of addressing this.

I mean, I think there are reasons other than the reasons Tony just gave, but then we all may have obviously different reasons or weigh different reasons differently. But I think that it really is the best way to go forward at this time given the equity issue, given the amount of public concern, and given just some of the potential difficulties of trying to make these

decisions.

DR. ZIEMER: Thank you, Jim.

This is Ziemer again.

Jim, if I might also comment on the way you had worded it, I think your last sentence there dealing with the or suggesting that we might later on change this in some way, seems to me that once we go in this direction I don't think there's much chance of turning back. It would be like changing the criteria for probability of causation, very difficult to go back the other way, don't you believe? Or are you suggesting that if experience showed that it would be possible that you would restrict the cancers again, having not done so initially?

DR. MELIUS: Presuming this meets Congressional intent and sort of these legal issues that are out there, assuming it addresses that, I think we'd have to examine the experience down the road and then make the determination. Are we encountering situations where it is not (inaudible; ongoing beeping) the Board doesn't feel it's appropriate to be including all the cancers in the cohort, then we would have a way of redressing that (inaudible). Would it be

hard? Yes. But it's obviously hard to do it the other -- do it the way that's being proposed now.

So I guess I was just trying to indicate there that I don't think we should necessarily close off that possibility, but I just -- my personal view is that it -- I think it's unlikely we would go back, but we could.

DR. ANDRADE: This is Tony Andrade again.

Jim, again, one of the reasons that I am proposing this for discussion at this point is that if you read the Congressional record and you try to pull out the intent, you really do come to that conclusion that they want us to be fair, but they also want us to be claimant friendly. And so I really think that (inaudible) way of being able to accomplish that in some equitable sense is to define for life, from here on out, that all 22 cancers shall be considered.

DR. ZIEMER: Other comments? I got cut off there briefly. I'm back on the line again. Jim was talking when I lost it, but I'm back on.

Jim, did you say anything important?

[Laughter]

DR. MELIUS: I doubt it.

DR. ZIEMER: I guess, Tony, you were responding to something Jim had said?

DR. ANDRADE: Right, right.

DR. ZIEMER: Did we lose any other Board members, or was it only --

DR. DeHART: Yes, I think so. Everybody's coming in now.

DR. ZIEMER: Coming back in?

DR. DeHART: This is Roy.

DR. ZIEMER: Let me interpret --

MR. ELLIOTT: This is Larry Elliott.

DR. ZIEMER: Cori, I wonder if we need to take a roll call again?

MS. HOMER: Another roll? Okay, very well.

DR. ZIEMER: Let's take a roll call --

MR. ELLIOTT: Cori, while you're doing that I'm going to ask --

DR. ZIEMER: -- (inaudible) losing people here.

MR. ELLIOTT: Cori, while you're doing the roll I'll have Nichole call the phone people and make sure that we didn't lose a series of ports.

MS. HOMER: Okay, very well. Thanks.

Okay, Paul Ziemer?

DR. ZIEMER: Yes.

MS. HOMER: Henry Anderson?

DR. ANDERSON: Yes.

MS. HOMER: Tony?

DR. ANDRADE: Here.

MS. HOMER: Roy?

DR. DeHART: Yes.

MS. HOMER: Rich?

MR. ESPINOSA: Here.

MS. HOMER: We know Larry's here. Mike Gibson?

MR. GIBSON: Yeah, I'm here.

MS. HOMER: Mark?

MR. GRIFFON: Yeah.

MS. HOMER: Jim Melius.

DR. MELIUS: I'm here.

MS. HOMER: Okay. Wanda Munn?

MS. MUNN: Here.

MS. HOMER: Leon?

MR. OWENS: Here.

MS. HOMER: Bob?

MR. PRESLEY: Here.

MS. HOMER: Gen?

DR. ROESSLER: Here.

MS. HOMER: Okay.

DR. ZIEMER: Okay, good.

MS. HOMER: Should I go through the list of public?

DR. ZIEMER: Well, that would be fine.

MS. HOMER: Okay. Cheryl Montgomery?

MS. MONTGOMERY: Here.

DR. ZIEMER: But they're not required to stay on.

MS. HOMER: Oh, okay. Well, I guess we can go ahead and proceed with discussion.

DR. ZIEMER: Right. We're required to have a quorum of Board members.

MS. HOMER: Yeah, exactly.

DR. ZIEMER: But public members can stay on or not as they wish.

Okay, further discussion on this item?

DR. ANDRADE: Paul, very briefly, what I mentioned, I guess when people started getting cut off, was the fact that in responding to Jim about perhaps leaving the door open on this, I said if we really want to meet Congressional intent -- and again, I take that to be, quote, "fair and claimant friendly" -- then I think that once and for all we should allow all 22 cancers to be considered in any Special Exposure Cohort petition.

DR. ZIEMER: Okay. Other comments?

DR. DeHART: This is Roy.

I really never understood why we were limiting the cancer. I couldn't understand it as we went through the proposal to begin with.

And secondly, I have to agree with Tony, that the intent is so strongly stated in the original legislation that I think that we might very well find that we're directed to go back to the 22 cancers.

So I think from the beginning we ought to hold to it, and hold to it for the duration.

DR. ZIEMER: And Roy -- Ziemer here again -- I was trying to point out in the comment that I inserted in there on comment 11 that in fact, scientifically and theoretically I believe it's entirely possible that you could have an unknown exposure situation where you could, in fact, say that certain tissues could not have gotten exposed. You might not know anything about doses, but you might know enough to be able to eliminate those.

But the real issue comes down to Congressional intent and the equity issue, it seems to me.

DR. DeHART: Yes.

MR. GRIFFON: But Paul -- this is Mark Griffon -- just one response, short response on your comment.

You mentioned you may have reasons for limiting it to certain tissues for certain unknown exposures. I think the key there is that you are dealing with unknown exposures, so it seems a little contradictory to say that you can --

DR. ZIEMER: Well, you notice I put it in terms of theoretically. I think I could (inaudible) a case where you could not figure out dose, but you could -- but based on some information -- I mean, we know about certain things about different facilities. Even though we may not know the dose, we know of some things.

But be that as it may, it's one thing to talk theoretically and say yes, but scientifically it could be possible. But there's kind of two sides to this. One is what's possible scientifically, and this other issue, which seems to be to some extent overriding, is Congressional intent and fairness.

Who else has comments?

[No responses]

DR. ZIEMER: And I guess I'll add to that. In fact, it's not clear in practice that they would ever find such a situation, even though it would be allowed for in the regulation.

MR. GRIFFON: I guess that's sort of where I was going.

This is Mark Griffon again, I'm sorry.

I didn't want to accept that we're dismissing science here. I think that even in the preamble to this proposed rulemaking, page 11297 under the Health Endangerment section, NIOSH says talks about (inaudible) a factual basis for establishing the possible level of radiation exposure (inaudible) quantitatively evaluate health endangerment. I think they're separating health endangerment there from -- as opposed to an organ, but I think they're very closely related.

So my point is that if you can't establish an upper bound you can't really specify which tissues. You don't know enough about exposure to specify which cancers, the tissues might be affected.

DR. ZIEMER: Okay. How about other comments, anyone?

DR. ROESSLER: This is Gen.

I just want to go on the record as saying that I think this proposal goes against common sense from the scientific point of view, but yet Tony was very persuasive in what he said. It seems that we really have the goal or the responsibility of meeting the Congressional intent, and from that point of view we possibility have no other choice.

DR. ZIEMER: Other comments?

MR. GIBSON: This is Mike Gibson.

I'd just like to say that given the site that -- given the fact that some of these sites were not even told that they were working with radioactive material, given the fact of DOE's poor recordkeeping and et cetera, I don't think we can ever actually determine if a person was correctly monitored for the correct isotope. So they may be put in a special cohort because of being exposed to a certain isotope, but in fact there could be other isotopes in the mix that were never, never -- employees were never monitored for that could catch one of the other

types of cancer.

DR. ZIEMER: Thank you. So you're arguing in favor of including all the cancers, then?

MR. GIBSON: Absolutely, yes.

DR. ZIEMER: Other comments? Pro or con.

MR. PRESLEY: Paul, this is Bob Presley.

DR. ZIEMER: Bob.

MR. PRESLEY: I agree with Tony 100 (inaudible).

DR. ZIEMER: Okay.

Any others?

DR. ANDRADE: In that case, Paul, I think I'd like to perhaps put forth a position to be voted on in the form of a motion, and that is simply that Section 83.13, subsection (b), subsection (1), small Roman (iv), be removed, or that we advise the Secretary that it is the sense of the Board that this section be removed; and that all other text, whether it be in the preamble or in the rule itself, that relates to limiting cancer types also be removed.

DR. ZIEMER: Okay. The motion has been made. Is there a second?

MR. GIBSON: I'll second that. This is Mike Gibson.

DR. ZIEMER: Mike Gibson has seconded the motion.

Is there any discussion, pro or con?

[No responses]

DR. ZIEMER: Is there anyone who wishes to speak against the motion?

[No responses]

DR. ZIEMER: I hear none. Let me, before we vote -- based on comments so far it appears that there may be strong support for the motion.

Let me suggest that if the motion carries -- and I want you to look at item 11 on the draft comments that refers to this section -- and let me ask you if you were to take everything down to the second to last line where it says "accordingly," and if you were to cross out all the words following "accordingly" and insert the Jim Melius statement that says, so it would say "Accordingly, the Advisory Board recommends that DHHS remove the provision to limit cancer eligible for compensation for a particular class being conducted for Special Exposure Cohort status," and insert that in place of the statement that asks NIOSH to determine this, and then that would be followed by an identification

of the particular section to be removed or altered.

DR. ROESSLER: Paul, this is Gen.

Then in Melius's suggested substitution there we would not put in the part that says that later experience with the program shows and continuing on, that would not be a part of it?

DR. ZIEMER: What I'm going to suggest is that we act on this without that at the moment, and then if someone wishes to modify it by adding that, so that we can deal with this main issue and then ask whether you want to allow the later possibility -- the possibility of a later change. Would that be agreeable? I don't want to get two issues mixed up on a fairly critical vote here.

DR. ANDRADE: That, I think, splitting that off would certainly meet the intent of -- the full intent of the --

DR. ZIEMER: Of your motion?

DR. ANDRADE: Of my motion.

DR. ZIEMER: What I'm suggesting, your motion would still hold. I'm suggesting how it might be worded in the transmittal.

DR. ANDRADE: That's fine, Paul.

DR. ZIEMER: Unless anyone sees any major

change -- and what I've done in suggesting this is allow the little narrative statement that says that we recognize the scientific and theoretical possibility that this could occur. And if you don't like that statement, I need to know that.

DR. ANDRADE: I think that that's fine.

DR. ROESSLER: I like leaving it in.

DR. ZIEMER: Although that in itself is not part of your motion, but I was trying to look at how we would actually present it. And we could present it just as exactly the way you stated it without this other stuff, if people were uncomfortable.

UNIDENTIFIED: I think it helps other people understand the discussions we've gone through.

DR. ZIEMER: Okay. Are you ready to vote on this motion?

[No responses]

DR. ZIEMER: Okay, I'm going to take a roll call vote.

Cori, if you will begin the roll call, and I will vote last.

MS. HOMER: All right.

Henry Anderson?

DR. ANDERSON: Yes.

MS. HOMER: Antonio Andrade?

DR. ANDRADE: Yes.

MS. HOMER: Roy DeHart?

DR. DeHART: Yes.

MS. HOMER: Richard Espinosa?

MR. ESPINOSA: Yes.

MS. HOMER: Mike Gibson?

MR. GIBSON: Yes.

MS. HOMER: Mark Griffon?

MR. GRIFFON: Yes.

MS. HOMER: James Melius?

DR. MELIUS: Yes.

MS. HOMER: Wanda Munn?

MS. MUNN: I abstain.

MS. HOMER: Okay. Leon Owens?

MR. OWENS: Yes.

MS. HOMER: Bob Presley?

MR. PRESLEY: Yes.

MS. HOMER: And Genevieve Roessler?

DR. ROESSLER: Yes.

MS. HOMER: Okay.

DR. ZIEMER: Okay, the motion carries.

MS. HOMER: Okay. Ziemer, would that be a yes?

DR. ZIEMER: Pardon me?

MS. HOMER: Would that be a yes from you?

DR. ZIEMER: Oh, yeah. I will vote to support the motion.

MS. HOMER: Okay.

DR. ZIEMER: Now the Chair will also now entertain, if anyone wishes to make a motion to add to this, Section -- the statement suggested by Dr. Melius, "If later experience with the program shows that including all eligible cancer types is problematic for a significant number of Special Exposure Cohort classes, then the Board is prepared to recommend steps to address this issue."

DR. MELIUS: This is Jim Melius.

I actually personally don't feel that that sentence is then necessary since we've already talked about this, that it's theoretically possible and so forth. I think that really covers the same concept, and I think it's implied that we can change our minds later. Whoever wants to, a new board or whatever, can change their minds and make other recommendations. So I --

DR. ZIEMER: So you're not suggesting we --

DR. MELIUS: I don't believe it's necessary.

DR. ZIEMER: Anyone else? Anyone want to add that?

[No responses]

DR. ZIEMER: It appears not.

Am I correct, now, that the main sections in addition to the preamble this will deal with are those that I had previously identified, which would be (b)(1) Roman numeral (iv), and (b)(2) Roman numeral (iii), both of which are -- there may be some others, but --

UNIDENTIFIED: Yes, those are the two main ones, Paul.

DR. ZIEMER: There are some other places where specified cancer comes up also, so -- but a general statement, if it's agreeable in terms of just editing, I can add that into the comment.

DR. ANDRADE: This is Tony, Paul.

Yeah, I believe that would be good, because there is substantial text in the preamble that needs to be removed as well.

DR. ZIEMER: Okay. Well, of course, then the -- I think in -- the final rulemaking actually is going to have discussion on issues that are made, and depending on the outcome of the final rulemaking there would possibly still be a

discussion of this issue and how NIOSH ultimately handled it. So I don't anticipate we would ask NIOSH not to discuss this issue in the preamble, and they will ultimately deal with how -- they will ultimately discuss with -- how they finally handle it. Right?

UNIDENTIFIED: That is correct.

DR. ZIEMER: Yeah. So I don't think we need to get into asking them to revise the preamble. It's going to be different anyway in the final copy, because they have to deal with all the comments that have -- this preamble dealt with a lot of comments from the earlier document, so those will all change anyway.

Okay, then I think we're ready to deal with the issue of sufficient accuracy.

I'm looking at -- and actually, again we have two possible things, two possible wordings, one of which is simply more or less a simple statement asking NIOSH to clarify the meaning of that. This is -- on the draft I distributed it's item 13. But those sections include the concept of not feasible to estimate doses with sufficient accuracy, the idea of sufficient accuracy not completely clear or obvious. It would be helpful

for NIOSH to provide additional clarification, whereas the Melius proposal is a little more -- has a little more specificity and asks for guidelines, that guidelines be developed. And as I see it, the guidelines could be developed later on.

I don't, Jim -- and you can clarify -- I don't think that you were asking that the guidelines be in the rule.

DR. MELIUS: No, no. That the rule could reference or the preamble to the rule, however, could reference the development of guidelines, and that the guidelines would be reviewed by the Board. This is not dissimilar to how we've handled the IREP changes in the dose reconstruction rules changes. The same, really the same --

DR. ZIEMER: Yeah. But so there's actually -- in a sense there's two kinds of options, and I think there's probably a third. But one option is just to point out the issue and ask NIOSH to address it; the second option is to pin it down a little closer and ask for the development of specific guidelines; another option would be that if people weren't concerned about this we don't

address it at all; and a fourth option would be to do something other than those three things.

And again, let me open it in general for Board discussion, and we can get some feeling for what direction you wish to go on this.

DR. MELIUS: Let me just -- Jim Melius.

Let me just speak to -- the reason I like to follow the pattern we did with the prior rules in terms of developing guidelines is I just think they provide more consistency to the process. And I think as opposed to purely a case-by-case approach, which is what NIOSH has talked about, all the guidelines does is make you sort of categorize your cases a little bit better, and think about making sure that you're consistent in the application of -- as you review different claimants that you're treating them fairly and equitably in that process, and guidelines just assist that.

And then as you develop experience with particular situations, they allow you to catalog that experience and organize them in a way that helps you to, I think, handle the claims, I think, both more efficiently but also more fairly.

And I think since it's called for in the original legislation, I think it's helpful that there be some record of what -- of how sufficient accuracy is being considered, and some record of how the feasibility of doing a dose reconstruction or not being able to do a dose reconstruction is considered. I sort of suspect that NIOSH would end up doing this gradually anyway. I just think this adds a little bit more focus on that.

And also, I think it's fairer for the claimants because they would then understand that their claims are being treated the same as similar claims; there's some rule or some guidance document to go back to that sort of fills in. It becomes more than just a case-by-case or the judgment of an individual dose reconstructer and the people reviewing that particular case.

DR. ZIEMER: Now let me ask if any of the Board members require any additional characterization or clarification of the issue itself. Does everybody understand how this arose?

And this also relates to comments that -- the

comments that Ted Katz was making and that Dr. Miller was making on this whole issue of sufficient accuracy. This deals with that worst-case business, where if there's a worst-case estimate and the probability of causation is greater than -- less than 50 percent, then in a sense if you've shown that there's no way that the person could have met the 50 percent probability of causation criteria, in a sense you've completed a sort of dose reconstruction and you're done.

But if they're over 50 percent they don't automatically meet the criteria of a dose reconstruction, because you at that point have only used worst-case estimate and haven't really done enough research, and additional information's called for. They might end up in a Special Exposure Cohort, but they also might not. And that was kind of the issue at that point.

But does anyone wish to make any specific motions or ask for additional clarification, or just comments, pro or con?

DR. ANDRADE: Paul, this is Tony.

By way of comment, I believe that Jim and Ted and others probably have a fairly clear

understanding of what they mean by sufficient accuracy, and I'm sure that it's consistent among the health physicists there at NIOSH.

Nevertheless, the way it came through in the proposed legislation or proposed rulemaking, it did suffer from lack of clarity. So what I guess I'd like to see is follow-through on your item number 13, that includes as the last sentence that it would be helpful if NIOSH could provide additional clarification of this concept either through the development of guidelines, further definition of the term, or through specific examples.

Now I'm sure they'll be able to come through on this.

DR. ZIEMER: Okay, other comments?

DR. MELIUS: This is Jim Melius.

I would, speaking up, but I could very well see guidelines that would rely on specific examples as the way that they would sort of communicate the guidelines. So I don't think that's inconsistent.

DR. ANDRADE: No, I don't think that's inconsistent either.

DR. ZIEMER: Tony, does your -- what you kind

of recommended there would be to start out with the paragraph 13, and then kind of move into Jim's words about developing specific guidelines within a reasonable period of time and so on, or were you not wanting to be that specific on it?

DR. ANDRADE: I didn't want to be too terribly specific and tie their hands, but I think what Jim is saying is a perfect example. It could be guidelines that use specific examples. And so I want to leave the concept open enough for the real technical people to take a stab at being a little bit more clear about the definition.

DR. ZIEMER: Other comments?

[No responses]

DR. ZIEMER: Let me ask a general question. Is there general concurrence amongst Board members that you would like us to ask for more specificity on this issue of sufficient accuracy? Or do you think it's okay as it is?

MR. GRIFFON: This is Mark Griffon.

DR. ZIEMER: Mark.

MR. GRIFFON: Yeah, I think -- I'm not sure if we can -- I agree with Jim Melius's asking for guidelines and actually having an opportunity for

the Board to review those guidelines.

I think the reason for that, I would like more specificity and possibly in the rulemaking, but I think we've had two cracks at it here in two proposed rulemakings, and I'm not sure that there's that much more clarity. So I think this might take a little longer, and might be better suited to guidelines --

DR. ZIEMER: As opposed to a rule?

MR. GRIFFON: Yes. So I think -- but I think, in this proposed rulemaking, I think we should recommend that NIOSH should develop guidelines and have input from the Board helping those guidelines.

DR. ZIEMER: Okay. Other comments?

[No responses]

DR. ZIEMER: Does anyone wish to make any specific motions?

[No responses]

DR. ZIEMER: Nobody wants to make any specific motions?

DR. MELIUS: I'm trying to combine the two here -- this is Jim Melius, Paul -- so that we can --

DR. ZIEMER: I was going to suggest something

similar, Jim, as it were, just take where I said it would be helpful if NIOSH could provide additional clarification of this concept, accordingly the Advisory Board recommends --

DR. MELIUS: And then use --

DR. ZIEMER: -- then move into your statement. In fact, let me suggest this, and then somebody can move it.

If you look at the Melius underlined paragraph on page 3 -- Jim, I think the words "DHHS reexamine the proposed approach to dose reconstruction and special exposure cohort designation," I don't know that we need all that. Just say "The Advisory Board recommends that guidelines addressing feasibility and sufficient accuracy be developed."

DR. MELIUS: That's fine.

DR. ZIEMER: And then "These guidelines should be developed within a reasonable time period," which is pretty flexible, "after promotion [sic] of the regulation and should be submitted to the Board for review. Appropriate changes should be made in the regulation to indicate the planned development of these guidelines and the process for their

development."

Is this too much, now? "Appropriate changes in the dose reconstruction regulations should be made to address," and where it says "the potential conflict," there's kind of an assumption there that there is -- there's an assumption that I'm uncomfortable with that there is a potential conflict. Just could generalize it, and say "any potential conflict between this rule and 42 CFR 82."

DR. MELIUS: That's fine with me.

DR. ZIEMER: That could leave some claimants ineligible for either individual dose reconstruction or Special Exposure Cohort status.

Do you want to make such a motion?

DR. MELIUS: This is Jim Melius.

I so move.

DR. ZIEMER: Is there a second?

DR. DeHART: This is Roy.

I'll second.

DR. ZIEMER: So what we have now is the statement kicks off with item 13, but it drops the last part of the sentence on 13 that says "either through definition of the term or through specific examples," and just moves into "It would

be helpful if NIOSH could provide additional clarification of this concept," and then it would stop there.

And then it would say "Therefore," and we'd continue with the Melius statement, but we'd delete from his first sentence "DHHS reexamine the proposed approach to dose reconstruction and special exposure cohort designation and that." Right there's where you would delete, and then you would continue with "guidelines addressing feasibility and sufficient accuracy be developed."

And then skipping down to the last sentence would say, "Appropriate changes in the dose reconstruction regulations should be made to address any potential conflict between this rule and 42 CFR 82 that could leave some claimants ineligible for either individual dose reconstruction or special exposure cohort status."

This that your motion, Jim?

DR. MELIUS: Yes, it is. Very good.

UNIDENTIFIED: Well stated.

DR. ZIEMER: Now let me ask if the Board, in

connection with that, wants to retain any of the other narrative that appeared in the Melius document, or is this sufficient?

I think the narrative was largely there to help to Board think about this, as opposed to being part of what you wanted to put in the recommendation.

Is that correct, Jim?

DR. MELIUS: Correct.

DR. DeHART: My second is as stated earlier.

DR. ZIEMER: Okay. So what you're saying is then we would not need to include all of the narrative that's in the document.

DR. MELIUS: Correct.

DR. ZIEMER: Okay. Now let me -- we have a motion on the floor before us.

I want to see now if there are any comments, pro or con. Anyone wish to speak in support of this motion or in opposition to the motion? And please feel free to do either. You won't hurt my feelings. I know you won't hurt Jim's feelings.

UNIDENTIFIED: We don't mind hurting Jim's feelings.

[Laughter]

DR. ANDRADE: This is Tony.

I support the motion. I think that tying this back to former legislation and ensuring that there's consistency is important, and the way it is stated -- I can't think of a better way to state it than the way y'all worked it out. So I'm in support of that.

DR. ZIEMER: Others, pro or con?

DR. ANDERSON: This is Andy.

I'm in support of it.

DR. ZIEMER: Okay. If anyone has got any major heartache with this one then get it out, because that might be helpful. Maybe we're overlooking something, so don't hesitate if you're uncomfortable or antsy about it.

MR. PRESLEY: Bob Presley.

I like it.

DR. ZIEMER: You're okay by it. Okay.

MS. MUNN: This is Wanda.

It isn't that I necessarily dislike where we are here. I guess at this juncture I'm having a little concern with what I perceive to be, and perhaps inaccurately perceive to be, a movement away from knowledge that we have based on the best science available, and acceptance of the responsibility that we have given our overseeing

agencies to perform their duties properly.

I recognize the desire that's been expressed here repeatedly. The term "specificity" must have been used 15 times already. I recognize the desire for that, and I'm certainly not opposing the language that's been presented. I just have some very severe heartfelt reservations about some of the directions that I see the Board making with respect to how the Agency is going to address these things, and what "fair" means.

That having been said, I have no objection to the wording as stated.

DR. ZIEMER: And Wanda, let me add that it seems to me that as a practical matter, in fact some guidelines are going to be developed anyway along these lines, perhaps explicitly or maybe implicitly. But, I mean, there has to be some methodology that's developed as we go forward.

And I think in a sense it seems to me we're simply asking for a better understanding of how those decisions are made in these cases where you have these worst-case estimates made on the one hand for the efficiency issues in the dose reconstruction, and as opposed to the issues of the special cohort which is a somewhat different

situation.

MS. MUNN: Yes.

DR. ZIEMER: Okay. Other comments?

[No responses]

DR. ZIEMER: Let me ask if the Board is ready to vote on this item.

[No responses]

DR. ZIEMER: Anyone not ready to vote?

[No responses]

DR. ZIEMER: Okay. Then we're going to vote on this motion, and all in favor will say "aye" when the roll is called.

And Cori, you're ready to call the roll?

MS. HOMER: Okay.

Henry Anderson?

DR. ANDERSON: Aye.

MS. HOMER: Antonio Andrade?

DR. ANDRADE: Yes.

MS. HOMER: Roy DeHart?

DR. DeHART: Aye.

MS. HOMER: Richard Espinosa?

MR. ESPINOSA: Aye.

MS. HOMER: Mike Gibson?

MR. GIBSON: Aye.

MS. HOMER: Mark Griffon?

MR. GRIFFON: Aye.

MS. HOMER: Jim Melius?

DR. MELIUS: Yes.

MS. HOMER: Wanda Munn?

MS. MUNN: Okay.

MS. HOMER: Leon Owens?

MR. OWENS: Aye.

MS. HOMER: Robert Presley?

[No responses]

MS. HOMER: Bob?

DR. ZIEMER: Did we lose Robert?

MS. HOMER: Uh-oh.

MR. PRESLEY: Yeah. Can you hear me?

MS. HOMER: Yes.

MR. PRESLEY: Aye.

MS. HOMER: Okay. And Genevieve Roessler?

DR. ROESSLER: Yes.

MS. HOMER: Dr. Ziemer?

DR. ZIEMER: Yes, and the Chair will vote aye.

MS. HOMER: Okay.

DR. ZIEMER: So the motion carries, and we will incorporate that combination statement into the last item on the list of comments.

Now one more time, let me ask the Board

members, are there additional comments that you believe should be included in the comments sent to the Secretary of HEW -- HHS, not HEW. HHS.

[No responses]

DR. ZIEMER: It appears not.

I also have provided you with the draft cover letter. That will be revised to reflect the fact that there were three conference calls rather than two on this subject, in the second to last paragraph, so I will update that.

The cover letter itself, we don't need to vote on. But if you have any grammatical things or something like that that you want to pass on to me before it goes to final form, why, you can do that individually.

Okay. Now it's my judgment that we have completed action on all the comments we want to comment on for the proposed rulemaking. Is everybody of the same understanding? Any that think there are additional things that we need to address at this point?

[No responses]

DR. ZIEMER: Apparently not.

I will ask Cori if you have any housekeeping issues relating to our upcoming meeting.

MS. HOMER: No. I think I've asked everybody for their travel arrangements.

I do have a question for you, if you could just go ahead and forward whatever comments in the final to me.

DR. ZIEMER: I will do that. And our comments are due in to the Secretary by what date, again?

MR. ELLIOTT: May the 6th.

DR. ZIEMER: May 6th, okay. Very good.

Now, let's see. Cori, just for the record, give us the dates of our next meeting again in Oak Ridge.

MS. HOMER: Okay. Our next meeting is scheduled for May 19th and 20th.

DR. ZIEMER: That will be --

MS. HOMER: In Oak Ridge at the Garden Plaza Hotel.

DR. ZIEMER: Okay, thank you very much.

MR. PRESLEY: Cori, are the meetings going to be at the Garden Club?

MS. HOMER: Yes, they are.

MR. PRESLEY: Wonderful.

MS. HOMER: Yes.

DR. ZIEMER: Okay. I think that then

completes our meeting, and I will declare us adjourned.

Thank you, everyone, very much.

[Whereupon, the meeting was adjourned at approximately 4:21 p.m.]

C E R T I F I C A T E

STATE OF GEORGIA)
)
COUNTY OF DEKALB)

I, KIM S. NEWSOM, being a Certified Court Reporter in and for the State of Georgia, do hereby certify that the foregoing transcript, consisting of 65 pages, was reduced to typewriting by me personally or under my direct supervision, and is a true, complete, and correct transcript of the aforesaid proceedings reported by me.

I further certify that I am not related to, employed by, counsel to, or attorney for any parties, attorneys, or counsel involved herein; nor am I financially interested in this matter.

This transcript is not deemed to be certified unless this certificate page is dated and signed by me.

WITNESS MY HAND AND OFFICIAL SEAL this 7th day of May, 2003.

KIM S. NEWSOM, CCR-CVR
CCR No. B-1642

[SEAL]